IN THE HIGH COURT OF BOMBAY AT GO A

WRIT PETITIONS NO. 514/2004 AND 515 OF 2004

Writ Petition No. 514 of 2004

1. Shri Damodar R. Pai Dukle,
   son of Shri Ramchandra Pai Dukle,
   of full age, residing Opposite Military
   Camp, Near Ganapati Temple,
   Rawanfond, Navelim, Salcete, Goa.

2. Shri Manjunath S. Pai Dukle,
   son of Shri Shrinivas Pai Dukle,
   of full age, resident of Flat No.C-5,
   1st Floor, Phase-I, Building C-5,
   Basant Vihar Co-op. Hsg. Society,
   Near St. Sebastian Church,
   Aquem, Margao, Goa.

3. Shri Sandesh N. Hegde Desai,
   son of Shri Narcinva Hegde Desai,
   of full age, residing Opposite Police
   Station, Quepem, Goa

4. Shri Pradip V.S. Kunde,
   son of Shri Vinayak S. Kunde,
   of full age, resident f Savorkotto,
   Cuncolim, Salcete, Goa.

5. Shri Abhay P. Agni,
   son of Shri Pundalik Agni,
   of full age, resident of House No.77,
   Rawanfond, Navelim, Salcete, Goa.

6. Shri Atchut G. Hegde Desai,
   son of Shri Govind Hegde Desai,
   of full age, residing Opposite
   Police Station, Quepem, Goa.

7. Shri Ashwin A.S. Bhobe,
   son of Shri Ashok S. Bhobe,
   of full age, resident of `Damodar Sadan',
   Gauns Wado, Mapusa, Goa.

8. Shri Yogesh V.S. Ghode,
   son of Shri Vasant S. Ghode,
   of full age, resident of Abade Faria
   Road, Margao, Goa. ..... Petitioners.

V/s.

1. Shri Jairam alias Jayaram H.S. Bhobe,
   son of late Hiru S. Bhobe,
   70 years of age, resident of
   Damodar Krupa Bungalow,
   Vodlem Bhat, Taleigao, Tiswadi, Goa.

2. The Administrative Tribunal,
   Panaji, Goa. ..... Respondents.

Writ Petition No. 515 of 2004

1. Shri Damodar R. Pai Dukle,
   son of Shri Ramchandra Pai Dukle,
   of full age, residing Opposite Military
   Camp, Near Ganapati Temple,
   Rawanfond, Navelim, Salcete, Goa.

2. Shri Manjunath S. Pai Dukle,
   son of Shri Shrinivas Pai Dukle,
   of full age, resident of Flat No.C-5,
   1st Floor, Phase-I, Building C-5,
   Basant Vihar Co-op. Hsg. Society,
   Near St. Sebastian Church,
   Aquem, Margao, Goa.

3. Shri Sandesh N. Hegde Desai,
   son of Shri Narcinva Hegde Desai,
   of full age, residing Opposite Police
   Station, Quepem, Goa

4. Shri Pradip V.S. Kunde,
   son of Shri Vinayak S. Kunde,
   of full age, resident f Savorkotto,
   Cuncolim, Salcete, Goa.

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   son of Shri Pundalik Agni,
   of full age, resident of House No.77,
   Rawanfond, Navelim, Salcete, Goa.

6. Shri Atchut G. Hegde Desai,
son of Shri Govind Hegde Desai,
of full age, residing Opposite
Police Station, Quepem, Goa.

7. Shri Ashwin A.S. Bhobe,
son of Shri Ashok S. Bhobe,
of full age, resident of `Damodar Sadan',
Gauns Wado, Mapusa, Goa.

8. Shri Yogesh V.S. Ghode,
son of Shri Vasant S. Ghode,
of full age, resident of Abade Faria
Road, Margao, Goa. ..... Petitioners.

V/s.

1. Shri Prasad Bhembre,
aged 58 years, agriculturist,
son of late Keshav Prabhu Bhembre,
Resident of Zambaulim, Goa.

2. The Administrative Tribunal,
Panaji, Goa. ..... Respondents.

Mr. M.S. Usgaonkar, Sr. Advocate with Mr. Sudesh Usgaonkar and Miss Priyanka Kamat, Advocate for the petitioners.

Mr. S.S. Kantak, Advocate for respondent No.1 in both the writ petitions.

CORAM : B.H. MARLAPALLE, J.

Date of reserving the Order :
2nd December, 2004.

Date of pronouncing the Order :
14th December, 2004.

O R D E R :

Heard Mr. M.S. Usgaonkar, the learned Senior Counsel with Mr. Sudesh Usgaonkar, Advocate for the petitioners and Mr. S.S.

Kantak, the learned Counsel for respondent No.1, in both the petitions. In both these petitions, a common Judgment in Devasthan Appeals No. 23/2004 and 24 of 2004 rendered on 29th October, 2004 by the Administrative Tribunal of Goa, has been assailed and hence, both these petitions are being disposed of by a common order.

2. Elections for the Managing Committee of Devashtan by name Shree Ramnath Damodar Sansthan at Zambaulim for the three year period i.e. from 2004 to 2007 were held on 8.2.2004 and the present petitioners came to be elected and also the substitute committee. The Managing Committee consists of the President, Treasurer, Attorney and Clerk (Secretary). It appears that in the General Body Meeting called for holding elections on 8.2.2004, two different panels for the regular as well as substitute Managing Committee were proposed. As there was no unanimity, elections by secret ballot, that is panelwise i.e. Panel `A' and Panel 'B', were proposed. In all 370 members (mazanes) had exercised their franchise and Panel A polled 197 votes; whereas Panel B 171 votes and two ballot papers were declared invalid. The present respondents were in Panel B and they lost in the elections. Both the respondents challenged the elections by filing Devasthan Appeal No.23/04 and Devasthan Appeal No. 24/04, respectively and by the impugned Judgment, the learned President of the Administrative Tribunal allowed the appeals and declared the elections held on 8.2.2004 as void and hence, set aside the same. The Administrator of the Devasthan has been directed to hold fresh elections, preferably

within three months by strictly following the procedure laid down under the Devasthan Regulation. However, the prayer made in Devasthan Appeal No.23/04 for declaring the appellant duly elected for the post of the President, has been rejected.

3. The Tribunal had called for the ballot box and record and proceedings. On examination of the same and after hearing the respective parties, it held that Damodar Dukle (Petitioner No.1 in Writ Petition No.514/04) was a candidate for the post of President and he himself conducted the elections and thus the election is void. The election has been declared to be void on the following grounds :

a) counting of votes was done by Shri Damodar Dukle, Rajesh Kakule and Gajanan Dukle who were themselves candidates.

b) the total number of votes polled were 370; whereas the meeting was attended by only 328 mazanes;

c) the persons had cast their votes without their names appearing in the list of capable members;

d) secrecy of votes was not maintained;

e) the elections were conducted panelwise and not candidatewise.

The Tribunal further held that the procedure followed gave scope for impersonating and bogus voting and the record of proceedings was not drawn up as required under Article 37 of the Devasthan Regulation. The election was conducted in grave violation of Articles 27 to 35. Shri Damodar Dukle had violated the provisions of

Article 37. The elections were conducted in terms of Article 40 and the present petitioners were declared elected as a result of voting by ineligible and non-members.

4. Mr. Usgaonkar, the learned Senior Counsel, by referring to the minutes of the elections proceedings dated 8.2.2004, submitted that initially 328 mazanes were present and when the subject of election was taken up, it was found that there was no unanimity and one group suggested eight names, whereas another group suggested another eight names for electing the new Managing Committee as well as substitute committee. It was, therefore, decided to hold the poll. The petitioners as well as the respondents were the candidates in the fray and no objection whatsoever was recorded even when it was decided to hold the elections as Panel A versus Panel B. When the election process commenced, some more mazanes came to cast their votes and they were allowed to do so as they were in the list of valid members and this is how in all 370 mazanes cast their votes. After the polling was over, the counting started and it was undertaken by the candidates from both the panels and not by the candidates from one panel alone. Even at this stage, there was no protest or objection recorded. It was only after the final count was announced and the Panel B lost by majority, that some of the members in the said Panel walked out and challenged the validity of the elections. None of them at any time during the election process recorded any objection and therefore, it was not permissible for them to challenge the validity of the election on

any of the grounds raised in the appeal. It was further submitted that the approach of the Tribunal has been hypertechnical and all the mazanes whose names were in the list of eligible mazanes till 8.2.2004 were eligible to cast their votes. The view of the Tribunal that the list of eligible members was required to be decided upto 15th January or 31st January is wholly erroneous. Mr. Damodar Dukle presiding over the meeting did not vitiate the election process and he being the President, chaired the proceedings. The minutes were recorded by him as the regular Secretary was not present and the substitute Secretary Mr. Rajesh Gopal Bhobe declined to record the proceedings. Along with the President, Mr. Jayaram Sinai Bhobe was allowed to sit on the dais to assist in voting and Mr. Gajanan Vishwanath Sinai Dukle had assisted the President. In addition, at the time of counting of votes, members from both the sides had participated. It was, therefore, not permissible for any of the panel members to raise objections to the elections, after having gone through the entire process, without raising any objections to the procedure adopted. So far as the panelwise election is concerned, it was contended that there was no bar in holding the elections in that manner, under Article 40.

5. On the other hand, Mr. Kantak, the learned Counsel for the present respondents and original appellants before the Tribunal, while supporting the impugned Judgment of the Tribunal, has submitted that the elections were required to be held postwise and the concept of

panelwise election was unknown to the Devasthan. Shri Damodar Dukle acted as the Presiding Officer as well as the Polling Officer when he himself was in the fray. By taking the assignment of writing proceedings by himself, he manipulated the proceedings and noted that some of the members from Panel B were also present on the dais and they had also issued ballot papers as well as counted them after the voting was over. Shri Damodar Dukle indulged in unscrupulous activities, thereby losing the secrecy of votes, allowing the non-members to vote and by enrolling additional mazanes, illegally. The whole election process was conducted as if it was a personal entity of Shri Damodar Dukle. The substitute Secretary was available, but he was not called upon to write the minutes. Each ballot paper was specifically marked so that during the process of counting it could be identified and the voting by any mazane would not remain secret. Though there were 328 mazanes present in the meeting and who had signed their presence, the votes polled were 370 and the list of these 370 mazanes was not made available at any time. Such a list was filed before the Tribunal for the first time and it was not even known to the Mamlatdar's Office. In his written submissions, Mr. Kantak has pointed out that when the list of 370 voters which was available in the ballot box when compared with the list of mazanes prepared under Article 25, it was noted that 35 voters were not having their names in both the lists, i.e. list prepared under Articles 25 and 26 and 67 voters did not have their names in the fist list prepared under Article 25. Names of all these 35 and 67 voters have been separately placed on

record by way of annexures 1 and 2.

6. Chapter III – Section I of the Devasthan Regulation, as approved by Diploma Legislative No.645, deals with the body of members, their enrolment, rights and obligations. As per Article 23 of the said Regulation, the bodies of members shall have a catalogue of their components written down in the book concerned, and it shall be revised every year by the Manging Committee till 31st December by making therein the enrolments in harmony with the bye-laws, the necessary eliminations and the endorsements to the enrollments of those who may become incapable. As per Article 25, the Secretary of the Committee shall draw a list, in duplicate, of the capable members or associates, till 15th January and one copy of this list shall be displayed for inspection at the respective temple, with a prior notice published in the periodicals of the Taluka or in the Government Gazette and the other forwarded to the Office of Taluka Mamlatdar till the 20th of the said month. Article 26 provides that the interested persons who may intend to be enrolled in the catalogue or in the list of capable members, or to object to the last revision or the list prepared, shall present, till 31st January, to the Managing Committee and these petitions are required to be decided by the Managing Committee till 10th February. An appeal is provided against the decision of the Managing Committee to the body of Members and subsequently to the Administrative Tribunal. As per Article 31, it shall be incumbent on the members or associates to discuss and vote in all their meetings, to

vote and be voted for the offences of members of the Managing Committee and their substitute and to indicate and propose all the means for the increase of funds and properties of the association, etc. Article 31 gives categories of persons forbidden to take part in deliberations of the body of members. Article 33 lists the persons who cannot be voted nor appointed to the Managing Committee. Article 35 states that it shall be incumbent on the Chairman of the Committee to take measures so that the incapable do not take part in the deliberations and on the clerk-cum-secretary of the assembly, not to receive the signatures of the said incapable persons on the book of record or proceedings. Article 36 states that the meetings of sessions of the bodies of members shall be public and they shall be presided over by the Chairman of the Managing Director. As per Article 38, the bodies of Members shall have every year three ordinary sessions, besides those mentioned in the bye-laws concerned, and the extraordinary ones that may be ordered or authorised by the administrator. As per Article 40, the Managing Committee shall be composed of a President, a Treasurer, an Attorney and a Clerk, all of them being elected by secret ballot by the body of members every three years in terms prescribed under the Regulation on second Sunday of the month of February for the period of next three financial years. Article 41 states that the outgoing Committee shall hand over the management and funds to its successor till the end of January, with the prior declaration of honour which shall be tendered before the Taluka Mamlatdar who shall fix before hand the day for this purpose. As

per Article 408, in Chapter III regarding penal proceedings, the Member who may decline to serve any administrative post or of an extraordinary committee, to which he may be appointed competently, shall be liable to a fine of Escudos 60$00.

7. There is no dispute that under the Regulation, the elections can be set aside on the ground of nullities and illegalities by filing an appeal before the Administrative Tribunal. In the instant case, the Tribunal rightly held that on the issue of revision of the list, the appeal was required to be presented to the Manging committee at the first instance and, therefore, it did not consider the challenge on that ground. There could be no dispute that the Judgment impugned could be confirmed on any or more grounds, as recorded by the Tribunal. However, these grounds must be leading to the conclusion of vitiating the election process on the ground of illegalities/nullities, thereby seriously affecting the election outcome/result.

8. Firstly taking the issue of holding the election panelwise, it needs to be noted that there is no restriction in the Regulation in this regard. But, that does not mean that it has been duly approved or accepted. In the past, there was hardly anytime in the history of this Devasthan that the elections were panelwise. The elections are required to be held strictly as per the procedures laid down under the Devasthan Regulation, which state that the elections will be by secret ballot and for the posts stipulated under Article 40. On the basis of

such a stipulation, it would not be permissible to hold the elections panelwise. Mr Kantak was right in his contentions that holding of elections panelwise takes away the right of a valid member to vote in favour of a candidate of his choice and in fact, the candidatewise choice does not remain as it is substituted by a panelwise choice. Such a situation is not contemplated, neither it is permissible under the Regulation. When Article 40 states that the elections are to be held for the posts, they cannot be empanelled in two panels. A valid voter may like to vote for the post of President in Panel A, but whereas, he may not like to vote for the remaining posts in the said panel. Just because the candidate contesting for the post of President is of his choice, he cannot be deprived of casting votes for the remaining three posts as per his choice. This valuable right of choice in casting the vote for constituting the Managing Committee is taken away by holding the elections panelwise and this is a gross irregularity, on which ground alone the subject-election is required to be declared as void and set aside, as Article 40 provides for elections postwise and not panelwise.

9. The ballot box produced before the Administrative Tribunal was called and opened before this Court. It was noticed that the ballot paper bore the stamp of the Devasthan and, in addition, they were marked by different numbers and these numbers tallied with the numbers set out before each name in the list of 370 members who cast their votes and this list was available in the ballot box. If the ballot paper bearing No.10 was taken out for counting, the person counting

could easily identity the name of the member who cast his ballot. The voting of this ballot is "Panel A" or "Panel B". The President who was himself a candidate i.e. Shri Damodar Dukle did not dispute that he presided over the proceedings all throughout and he also counted the ballot papers after the polling was over. He admits that at least 70 ballot papers he had issued. His contention that the remaining ballot papers were issued by the substitute Secretary who contested from Panel B has been refuted. Thus, it is clear that at lease 70 ballot papers Shri Damodar Dukle identified while counting the votes. This jeopardizes the whole election process. When the voting has been prescribed to be by secret ballot, maintaining secrecy of the ballot is imperative and it cannot be perfunctory. If the secrecy has not been maintained, the elections could be invalid. It was submitted by Mr. Usgaonkar that these numbers were marked to avoid any malpractice and duplication of votes. If that was the intention, there were other methods also for ensuring the same rather than giving numbers which were marked in the original list against each name and the said list was with the President when he was counting the votes. The Tribunal has rightly held that the secrecy of votes was compromised and it was not an election under secret ballot, as required under Article 40 of the Devasthan Regulation.

10. By reading the provisions of Articles 25 and 26 together, it is possible to hold that any capable member whose name is entered in the catalogue before the date of election, is a valid voter. In the instant

case, when the meeting commenced on 8.2.2004, 328 members recorded their attendance and towards the close of the election process, in all 370 cast their ballots. Thus, there was a difference of 42 votes. Mr. Usgaonkar contended that these 42 were the members who subsequently joined the proceedings and as they were valid members, they were allowed to cast their votes. Nothing wrong was committed if this was a reality. However, on closer examination of the whole proceedings, it was noticed that the list which was originally sent to the Mamlatdar under Article 25 was not the same list which was prepared under Article 26 and in addition, there was a third list placed in the ballot box, consisting of 370 names. The list prepared under Articles 25 and 26 was compared vis e vis the list of 370 members which was available in the ballot box, and it was noticed that 35 members were not in either of the lists prepared under Articles 25 and 26. In addition, 67 voters did not find their place in the list prepared under Articles 25. This improvisation of 67 voters over and above the list prepared under Article 25 may be termed as an irregularity. But, so long as they were the valid members as on 8.2.2004, their casting of votes may not vitiate the election process, so as to declare it invalid. However, 35 voters whose names are not found in both the lists were in the list of 370 members who cast their votes, has vitiated the election process, so as to declare the entire election process void. The charts at annexures 1 and 2 when compared with the lists prepared under Articles 25 and 26 clearly support this finding. It has to be, therefore, held that 35 persons who

were ineligible to vote, have cast their votes. The lead of Panel A over Panel B is that of 22 votes only. This also goes to show that from amongst the additional 42 votes cast over and above the list of 328 members who were initially present in the proceedings, 35 of them were ineligible to vote.

11. Shri Damodar Dukle validly presided over the meeting held on 8.2.2004 till the stage of receiving nominations by way of proposals. But, once his name was nominated for contesting the post of President and there was no unanimity, and since he was a candidate in the fray, it was imperative for him to call upon the mazanes present to elect the new Presiding Officer to proceed with further process of holding the elections. When he was in the fray and there was a contest, requiring casting of votes by a secret ballot, it was necessary for him to leave the dais. He did not do so and instead he not only continued to be on the dais, indeed counted the votes as well. When the substitute secretary was available, it was necessary that he was called upon to write the proceedings. Shri Damodar Dukle contended that the substitute Secretary refused to do so. Whereas the substitute Secretary contended that he was never called upon to write the proceedings. The latter's version appears to be more reliable inasmuch as the proceedings are self revealing. The endorsement of members from Panel B, leaving the meeting, has been added towards the end and in the earlier part of these proceedings, it is not mentioned that the substitute secretary was called upon to record the proceedings by the president and he

refused to do so. The proceedings have been written in various stages. The President, thus, indulged in irregularities, thereby casting a shadow on his acts. Mr. Kantak submitted that the appellants before the Tribunal had, at every stage, attempted to record their objections, but they were either refused to be accepted or were discarded by oral replies and when written objections were sought to be submitted, they were refused to be accepted. As the President himself did all the roles, it would be difficult to discard the submissions made by Mr. Kantak.

12. The Tribunal has considered all these issues in their right perspectives and its findings that they have vitiated the election process do not call for interference under Article 227 of the Constitution. The tribunal has rightly set aside the election by declaring it void. The challenge to the impugned Judgment is, therefore, devoid of merits and the petitions must fail. Hence, the petitions are rejected summarily. Fresh elections, as directed by the Tribunal, must proceed.

B.H. MARLAPALLE, J.

ssm.